

TITLE 7 HEALTH
CHAPTER 31 HEALTH NUTRITION PROGRAMS
PART 2 SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN VENDOR REQUIREMENTS

7.31.2.1 ISSUING AGENCY: New Mexico Department of Health, Public Health Division, Family Health Bureau.

[10-31-96, 10-31-96; 7.31.2.1 NMAC – Rn, 7 NMAC 31.2.1, A, 5-31-2000]

7.31.2.2 SCOPE: These regulations will establish requirements and conditions under which grocery stores and pharmacies may become and remain authorized to participate in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) as retail vendors to supply authorized foods to WIC participants.

[8-30-89, 10-31-96, 10-31-96; 7.31.2.2 NMAC – Rn, 7 NMAC 31.2.2, 5-31-2000]

7.31.2.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated by the Secretary of the New Mexico Department of Health, by authority of N.M. Stat. Ann. 1978, Section 9-7-6E, and pursuant to the Special Supplemental Nutrition Program for Women, Infants and Children established under Section 17 of the Child Nutrition Act of 1966, as amended, 42 USC Section 1786, and laws and regulations set forth in 7 CFR Section 246, 7 CFR Section 278.1, 7 CFR Section 15, and N.M. Stat. Ann. 1978, Section 30-16-7 (Cum.Supp. 1987); and other applicable provisions of state and federal law. These regulations shall be administered and enforced by the New Mexico Department of Health, Public Health Division.

[8-30-89, 10-31-96, 10-31-96; 7.31.2.3 NMAC – Rn, 7 NMAC 31.2.3, 5-31-2000]

7.31.2.4 DURATION: Permanent.

[8-30-89, 10-31-96; 7.31.2.4 NMAC – Rn, 7 NMAC 31.2.4, 5-31-2000]

7.31.2.5 EFFECTIVE DATE: October 31, 1996, unless a later date is cited at the end of a Section.

[8-30-89, 10-31-96; 7.31.2.5 NMAC – Rn, 7 NMAC 31.2.5, A, 5-31-2000]

7.31.2.6 OBJECTIVES: It is the purpose of these regulations to establish requirements and conditions under which grocery stores and pharmacies may become and remain authorized to participate in the Special Supplemental Nutrition Program for Women, Infants and Children (hereinafter, the "WIC" program or "WIC"), as vendors to supply authorized WIC Foods and/or infant formulas to WIC participants.

[8-30-89, 10-31-96, 10-31-96; 7.31.2.6 NMAC – Rn, 7 NMAC 31.2.6, 5-31-2000]

7.31.2.7 DEFINITIONS:

A. “Applicant” means a grocery store or pharmacy which applies to the State WIC Office to be an authorized vendor.

B. “Authorized Food List” means the list of authorized foods approved by the State WIC Office.

C. “Authorized Foods” or “WIC Authorized Foods” means only those types, brands or varieties of foods and infant formulas which meet requirements specified under 7 CFR 246 and the WIC policy manual, are approved by the State WIC Office, and are listed on the authorized food list in the Vendor Manual, and on the Vendor Grocery Food Price Record Form and Special Infant Formula Price Form.

D. “Change of Ownership” means any transfer of the right to control the assets or management of a vendor, or any majority changes in ownership of a sole proprietorship, of a partnership or of the stock of a corporation which owns a vendor location.

E. “Check” means a WIC Food Instrument.

F. “Clinic Service Area” means the geographic area or population group served by a local clinic.

G. “Customer Area” means the portion of a grocery store or pharmacy which is normally frequented by customers, exclusive of storage or other areas.

H. “Department” means the State of New Mexico Department of Health.

I. “Disqualification” means cancellation of a vendor’s authority to participate in the WIC program.

J. “Food Vendor Agreement” means a completed agreement and application that has been approved and signed by the State WIC Office and by the vendor. This agreement incorporates by reference the provisions and

program requirements set forth in the Vendor Manual, the authorized food price record, periodic newsletters, and other formal instructions which may from time to time be issued by the State WIC Office to vendors.

K. “Food Vendor Agreement Period” means a period of two years beginning October 1 and ending on September 30 of the second year.

L. “Food Instrument” or “WIC Food Instrument” means a voucher, check, electronic benefits transfer card (EBT), or other document which is used by participants in the WIC program to obtain WIC authorized foods and or infant formulas.

M. “Food Stamps” means an assistance program under the Food Stamp Act of 1964, as amended, 7 U.S.C. Section 2011 (1964), that may use paper stamps or electronic means to provide benefits.

N. “Full Service Grocery or Pharmacy” means a grocery vendor location that provides a variety of food items that allow WIC’s nutrition education component to be utilized at will by WIC participants, or a duly licensed New Mexico pharmacy vendor location that provides pharmaceuticals and nutritional supplements. The nutrition education component includes, but is not limited to, improving family nutrition, and teaching economical shopping techniques. A variety of food items shall include dairy products (eggs, milk, cheese, etc.), meats (beef, chicken, pork), fresh fruits and vegetables (to include, but not limited to – oranges, apples, bananas, potatoes, tomatoes, carrots, lettuce), other foods (to include basic baking products, pastas, crackers, bread, tortillas, margarine, canned fruits/vegetables/meats), household items (cleaning supplies, paper goods, etc), and foods required per minimum inventory of WIC foods.

O. “Grocery Store” means a retail store in a fixed and permanent location that is open and operating and whose primary business is the sale of food.

P. “Incidence” means 1 instance of conduct.

Q. “Investigation” means 3 positive compliance buys out of 5, or other investigative means to detect fraud or abuse. A “compliance buy” is a purchase from a vendor by an agent of the State agency to test a vendors compliance with state and federal regulations governing the WIC program.

R. “Minimum Stock Requirement” means the minimum quantities and varieties of authorized foods and/or infant formulas a grocery store or pharmacy is required to keep in the customer area as specified on the vendor authorized food price record, or special infant formula price record and in the Vendor Manual.

S. “Participant(s)” means only the following classes of persons certified eligible to receive supplemental food, nutrition education, and counseling services under the WIC program:

- (1) A pregnant woman;
- (2) A woman up to 12 months after giving birth who is breastfeeding her infant;
- (3) A woman up to 6 months after a pregnancy has ended who is not breastfeeding her infant;
- (4) An infant from birth to one year of age; or
- (5) A child from one to five years of age.

T. “Participant access” means provision of 1 vendor per every 225 participants. The state agency may vary this ratio if the state agency determines that participant access would be improved. Other criteria may include but not be limited to: new clinic site opening, participant caseload increases, new participant population center recognized, problems with WIC Program compliance, etc.

U. “Pattern” means 3 or more instances of conduct.

V. “Participant access determination criteria” means the State agency shall consider, at a minimum, the availability of other authorized vendors in the same area as the violative vendor and any existing practical barriers, such as distance, availability of transportation, to using other authorized vendors. The State agency may consider other criteria as it deems appropriate.

W. “Pharmacy” means an establishment issued a license to operate as a pharmacy under New Mexico laws.

X. “Sanction” means a penalty for violation of, or non-compliance with, federal and/or state WIC Program policies and regulations which may include disqualification, suspension, or civil monetary penalties assessed in lieu of disqualification.

Y. “Standardized Combination of Foods” means a group of specific types of authorized foods and/or infant formulas identified on commonly-used food instruments which are selected by the State WIC Office for the purpose of calculating average prices charged by vendors and vendor applicants.

Z. “State Plan” means a plan of program operation and administration that describes the manner in which the State Agency intends to implement and operate all aspects of program administration within its jurisdiction in accordance with 7 CFR 246.4.

AA. “State WIC Office” means the Division of the Department which administers the WIC program.

BB. “Suspension” means temporary disqualification from the WIC program.

CC. “Unlawful Dealing in WIC Checks” means buying, selling, trading, bartering or possessing WIC checks with the intent to obtain an economic benefit not allowed under these regulations. Unlawful dealing in WIC checks is a criminal offense punishable under state and federal law.

DD. “USDA” means the United States Department of Agriculture.

EE. “Vendor” means a full service retail grocery store or pharmacy in a fixed and permanent location authorized by the WIC office by signed agreement to sell authorized foods and/or infant formulas to WIC participants.

FF. “Vendor Manual” is a publication developed by the State WIC Office for the guidance of vendors as a supplement to these regulations. This manual describes the WIC program, program policies and requirements, and explains vendor obligations and sanctions. Copies of the Vendor Manual may be obtained from the State WIC Office, Department of Health, Public Health Division, Family Health Bureau – WIC, 525 Camino de los Marquez, Suite 6, Santa Fe, NM 87501.

GG. “Vendor Number” is the unique WIC identification number used to validate food instruments which is issued to a vendor when authorized to redeem New Mexico WIC Food Instruments.

HH. “Vendor Stamp” means the rubber stamp with the vendor’s name, store number, if any, and authorized vendor number on it, which is provided to vendors by the State WIC Office, and is required to be used for validating food instruments.

IL. “WIC” means the Special Supplemental Nutrition Program for Women, Infants and Children authorized by Section 17 of the Child Nutrition Act of 1966, as amended, 42 USC Section 1786 (1966).

JJ. “WIC Policy Manual” is a publication developed by the State WIC Office for internal use, and approved by the Department of Health and USDA. This manual details the policies and procedures necessary to operate the State WIC program.
[8-30-89, 10-31-96, 10-31-96; 7.31.2.7 NMAC – Rn, 7 NMAC 31.2.7, A, 5-31-2000]

7.31.2.8 SEVERABILITY: If any part or application of these regulations is held invalid, the remainder, or its application to other situations or vendors shall not be affected.
[8-30-89, 10-31-96; 7.31.2.8 NMAC - Rn, 7 NMAC 31.2.8, 5-31-2000]

7.31.2.9 STANDARD OF COMPLIANCE: The degree of compliance required by these regulations is designated by the use of the words “shall” and “may”. “Shall” designates mandatory requirements. “May” designates permissive requirements.
[8-30-89, 10-31-96; 7.31.2.9 NMAC - Rn, 7 NMAC 31.2.9, 5-31-2000]

7.31.2.10 VENDOR AUTHORIZATION REQUIRED: Only full service retail grocery stores and pharmacies that are authorized as vendors by the State WIC Office may accept WIC food instruments and redeem them through the State WIC Office for foods provided to participants. Food instruments accepted by unauthorized grocery stores, pharmacies, or others will not be redeemed.
[8-30-89, 10-31-96, 10-31-96; 7.31.2.10 NMAC - Rn, 7 NMAC 31.2.10, 5-31-2000]

7.31.2.11 VENDOR SELECTION: In accordance with the State Plan and federal regulations, the State WIC Office shall authorize only a sufficient number and distribution of full service retail grocery and pharmacy vendors in fixed and permanent locations to assure reasonable participant convenience and access, and to permit effective management of the program. Details of the specific selection criteria will be furnished upon written request to the State WIC Office.
[8-30-89, 10-31-96, 10-31-96; 7.31.2.11NMAC - Rn, 7 NMAC 31.2.11, 5-31-2000]

7.31.2.12 NONDISCRIMINATION: The State WIC Office shall not discriminate against an applicant or vendor on the basis of race, color, national origin, age, sex, handicap or disability, or other impermissible basis as set forth in applicable state or federal law.
[8-30-89, 10-31-96; 7.31.2.12 NMAC - Rn, 7 NMAC 31.2.12, 5-31-2000]

7.31.2.13 CONDITIONS OF ELIGIBILITY: To be authorized as a vendor, a full service retail grocery store or pharmacy shall, at a minimum, meet the following criteria at the time of application:

A. FAVORABLE HISTORY OF COMPLIANCE: If the vendor has had prior involvement with WIC or any other Food and Consumer Service Programs of the USDA, it must have demonstrated an acceptable history of compliance with these programs. A history of suspension, termination or noncompliance with these programs, or a history of doing business with these programs without authorization, may constitute grounds for denial of the application for a period of up to three years from the date of notice of denial;

B. The applicant must be authorized to participate in the USDA Food Stamp Program;

C. The applicant location must be open, operating and accepting cash sales;

D. The applicant must be a full service grocery or pharmacy and must meet minimum requirements for stocking a variety of WIC authorized foods and/or infant formulas;

E. The applicant must be in compliance with all applicable health, safety and sanitation codes;

F. All WIC authorized foods and/or infant formulas stocked by the applicant must be fresh, with no out-of-date foods or infant formulas available for sale to the public;

G. The applicant must charge a price for a standardized combination of foods and/or infant formulas which is less than or competitive with the average price charged for those foods or infant formulas by authorized vendors doing a similar dollar volume of business; and

H. The applicant must demonstrate a knowledge and understanding of WIC program requirements, and be found satisfactory to the State WIC Office following a pre-authorization site visit or other review.

[8-30-89, 10-31-96, 10-31-96; 7.31.2.13 NMAC - Rn, 7 NMAC 31.2.13, A, 5-31-2000]

7.31.2.14 SPECIAL ELIGIBILITY REQUIREMENTS FOR PHARMACIES: Pharmacies must comply with the terms of the Vendor Agreement and with all other applicable state and federal regulations in the same manner as other vendors. At the request of a pharmacy, and in the discretion of the State WIC Office, the minimum stocking criteria as outlined in Section 7.31.2.13.D above, may be waived or modified. However, pharmacies must at all times be able to provide adequate quantities of special infant formula to meet participant needs.

[8-30-89, 10-31-96, 10-31-96; 7.31.2.14 NMAC - Rn, 7 NMAC 31.2.14, 5-31-2000]

7.31.2.15 APPLICATION FOR AUTHORIZATION: Any owner of a full service grocery store or pharmacy in a fixed and permanent location in New Mexico that is open fully operational may request a vendor application from the State WIC office through December 31 and return the completed application packet to the State WIC office no later than January 31. Reapplying vendors may apply for reauthorization as a vendor by submitting an application to the State WIC Office during the month of July on forms provided by the office. Information provided in applications shall be accurate and complete. Applicants shall promptly provide additional information relating to the conditions of eligibility upon request by the State WIC Office. The State WIC Office may deny an application if false or incomplete information is submitted. Applications rejected as incomplete may be resubmitted within 15 days of the vendor's receipt of denial of its application. Failure to resubmit within this period may result in denial of authorization.

A. MINIMUM REQUIREMENTS: An application shall include at a minimum the following information:

- (1) Sole Proprietors: the name and address of each owner and of each applicant location.
- (2) Partnerships: the names and addresses of all general partners; the addresses of the principal and each subsidiary place of business; and of the New Mexico agent for service of process if a foreign partnership.
- (3) Corporations: the name of the corporation; the addresses of its principal and each subsidiary place of business; and of the New Mexico agent for service of process if a foreign corporation.
- (4) The square footage of each applicant location.
- (5) The annual gross receipts for applicant sales separated into food and non-food categories.
- (6) The applicant's Federal Food Stamp Authorization Number.
- (7) A description of the applicant's participation in Food and Consumer Service Programs of the USDA.
- (8) A detailed description of each instance in which the applicant or its owners or managers have been suspended or disqualified from the WIC, Food Stamp, or other USDA Food and Consumer Service Programs.
- (9) The applicant's state tax identification number.
- (10) The applicant's federal tax identification number.

(11) An identification by types and non-sale prices of all authorized WIC foods and/or infant formulas on shelves or in the coolers in customer areas of each applicant location on the date of the application.

(12) All other information as requested on the application form, or by the State WIC Office upon request.

B. REVIEW OF APPLICATIONS:

(1) New applicants. The State WIC Office shall either approve or deny a completed application for initial authorization within 60 days of receipt or of the date the vendor opens to the public for business, whichever is later.

(2) Reapplying vendors. Applications for continued authorization shall be the same as those for new applicants, except that the State WIC Office may, in its discretion, waive the requirement of a site visit. The State WIC Office shall either approve or deny a completed application for continued authorization within 90 days of receipt.

(3) Approved applications. If the application for a new applicant is approved, a signed agreement, vendor stamp, sign and a New Mexico Non-Taxable Transaction Certificate shall be furnished to the vendor. If the application is approved for a reapplying vendor, a signed agreement is furnished to the vendor.

(4) Duration of Authorization. All authorizations shall expire on September 30 of the second calendar year of each two year agreement period regardless of when initial authorization was granted. A new application shall be submitted for each two year agreement period during the month of July of the second calendar year of the current two year agreement period.

(5) Resubmission of applications. If an application for authorization is denied, the applicant may resubmit its application following correction of the deficiency(ies) which resulted in the denial, except that an applicant who furnishes false or misleading information in an application shall not reapply until the next new vendor application period. The State WIC Office may deny resubmitted applications if requirements have not been met by the second site visit, or if the basis for the initial denial was unfavorable history with other USDA Food and Consumer Service Programs.

C. PREAUTHORIZATION SITE VISITS: All site visits may be announced or unannounced.

(1) New applicants. A site visit shall be required for all new applicants. The State WIC Office shall not be required to make more than two pre-authorization site visits per applicant per 12 month period.

(2) Reapplying vendors. A site visit may be made to verify the existing conditions at reapplying vendors. The State WIC Office shall not be required to make more than two pre-authorization site visits per applicant per 12 month period.

D. GROUNDS FOR DENIAL OF AUTHORIZATION: Grounds for selection are set forth in 7.31.2.11 NMAC. In addition, authorization may be denied for reasons including, but not limited to, the following, if at the time of the site visit or application:

(1) The applicant does not have WIC foods and/or infant formulas meeting the minimum stock and variety requirements on shelves or in coolers in the customer area;

(2) Prices are not marked on food or infant formula containers, or otherwise posted in the immediate area where the foods or infant formulas are kept in the customer area of the store;

(3) Prices are substantially different from those listed on the food price record or the special infant formula price record;

(4) The applicant is in violation of applicable federal, state or local health protection laws or ordinances;

(5) Authorized foods and/or infant formulas are older than the expiration date indicated on the package, or are otherwise not fresh;

(6) It is determined that the applicant provided false or misleading information on the application.

(7) The applicant has an unfavorable history with the Food Stamp Program or other USDA Food and Consumer Service Programs.

E. SUSPENSION OR TERMINATION OF AUTHORIZATION: As set forth more specifically in 7.31.2.20 NMAC, below, the State WIC Office may suspend or terminate a vendor's authorization at any time during the agreement period, and may deny renewal of authorization for failure to comply with program requirements. [8-30-89, 10-31-96; 7.31.2.15 NMAC - Rn, 7 NMAC 31.2.15, A, 5-31-2000]

7.31.2.16 CHANGE OF OWNERSHIP:

A. EXISTING OWNERS: Authorization of a vendor location shall terminate automatically upon a change of ownership. Vendor location authorization is non-assignable and non-transferrable. Vendors shall

immediately report a change of ownership or of location to the State WIC Office. All food instruments accepted prior to the change shall be deposited in the vendor's bank immediately, and WIC business shall cease until an application has been submitted by the new owner and approved by the State WIC Office. The vendor shall return the vendor stamp to the State WIC Office immediately.

B. NEW OWNERS: A new owner shall have 30 days from the date of transfer of ownership in which to apply for authorization to continue an authorization held by a previous owner. New owners who fail to apply within 30 days may apply during the next new vendor application period.

[8-30-89, 10-31-96; 7.31.2.16 NMAC – Rn, 7 NMAC 31.2.15, 5-31-2000]

7.31.2.17 TRAINING: The State WIC Office shall provide training designed to assist the vendor in preventing program errors or abuse, and to improve program services. The owner of each vendor location, or his designated agent shall participate in all training sessions designated as mandatory by the State WIC Office. Failure of an owner or his agent to appear without good cause for a mandatory training session shall be grounds for minor sanctions as deemed appropriate to the circumstances by the State WIC Office. It shall be the responsibility of the owner or his agent to ensure that all employees who process food instruments are trained in WIC procedures, and a claim of lack of training or knowledge of procedures shall not be a defense to adverse action by the State WIC office against a vendor.

[8-30-89, 10-31-96; 7.31.2.17 NMAC – Rn, 7 NMAC 31.2.17, 5-31-2000]

7.31.2.18 VENDOR RESPONSIBILITIES:

A. COMPLIANCE WITH FEDERAL, STATE AND LOCAL REQUIREMENTS: Vendors shall comply with all applicable federal, state and local laws, ordinances and regulations. Specifically, but without limitation, vendors shall comply with all WIC program requirements set forth herein, and as codified in the Code of Federal Regulations, which are incorporated herein by reference. In addition to sanctions set forth below, failure to comply with applicable WIC regulations may result in loss of federal food stamp program authorization.

B. FOOD INSTRUMENT REDEMPTION: Vendors shall:

(1) Provide to participants, in exchange for food instruments, only the foods and/or infant formulas specified on the authorized food and/or infant formula list, and in quantities less than or equal to those specified on the food instrument;

(2) Accept food instruments only for foods and/or infant formulas included in the agreement; and

(3) Comply with food instrument processing and redemption procedures as set forth by the State WIC Office.

C. VENDOR STAMPS:

(1) Liability for loss or misuse. Vendors are responsible for the vendor stamps with their unique identification number that are issued to them. Vendors shall keep the vendor stamp in a safe place, and shall promptly notify the State WIC Office of a lost, stolen, or damaged vendor stamp. Failure to promptly notify the State WIC Office of such loss may result in the vendor being held liable for reimbursement of illegally negotiated food instruments. A vendor shall pay the cost plus certified mailing fees for any additional vendor stamps.

(2) Duplication. A vendor shall not duplicate a vendor stamp.

(3) Authorized uses. The vendor stamp shall be used only to validate those food instruments accepted at the vendor location for actual purchases of authorized foods. Use of a vendor stamp for any other purpose is strictly prohibited.

(4) Return. Vendors shall return issued vendor stamps to the State WIC Office immediately upon a change in ownership, upon going out of business, upon bankruptcy, upon suspension or termination of authorization, or upon demand by the State WIC Office.

D. STOCK: Vendors shall at all times maintain fresh WIC authorized foods and/or infant formulas meeting the minimum stock and variety requirements on the shelves or in coolers in the customer area of the store.

E. PRICES: Vendors shall:

(1) Charge participants prices that are equal to or lower than prices charged to other customers;

(2) Charge participants no sales tax;

(3) Promptly provide price lists to the State WIC Office upon request;

(4) Maintain competitive prices consistent with prices charged by other vendors doing a comparable dollar volume of business;

(5) Display the prices of authorized foods and/or infant formulas on the foods or formulas, or on the shelves or coolers in proximity to the foods or infant formulas, or in the immediate area where the foods or infant formulas are kept in the customer area of the store;

(6) Enter the actual price of the food and/or infant formula purchased on the food instrument at the time of purchase, and provide the WIC participant with an itemized receipt; and

(7) Enter the actual redemption date on the food instrument at the time of purchase.

F. INFORMATION REQUIRED TO BE ON DISPLAY OR IN FILE: Vendors shall:

(1) Maintain on file at each vendor location at all times a copy of the Vendor Manual, the approved Food Vendor Agreement, the Non-Taxable Certificate, newsletters and other updates and instructions received from the State WIC Office;

(2) Display a sign, sticker or other conspicuous notice of authorization as a State WIC vendor visible to participants in the customer area of the store, and;

(3) Ensure that current State WIC Office authorized food lists are readily accessible to cashiers.

G. EQUAL ACCESS/NONDISCRIMINATION: Vendors shall make available to WIC participants the same services offered to all other customers; shall extend the same courtesies to WIC participants as to all other customers; and shall otherwise accord participants the same treatment as all other customers.

H. ACTS OF EMPLOYEES: Vendors have an affirmative duty to train employees in WIC procedures. Vendors are responsible for the acts or omissions of their employees in transacting WIC-related business.

I. DUTY TO REPORT: Vendors shall promptly notify the State WIC Office of suspected instances in which a participant has failed to comply with WIC program requirements, or engaged in fraud or abuse of the program.

[8-30-89, 10-31-96; 7.31.2.18 NMAC – Rn, 7 NMAC 31.2.18, A, 5-31-2000]

7.31.2.19 MONITORING VISITS: The State WIC Office may conduct one or more on-site monitoring visits during an agreement period in order to verify vendor compliance with program requirements. Such visits may be unannounced, and may occur at any time during vendor business hours. Independently or in conjunction with such on-site visits, the State WIC Office may also audit a vendor's records to verify compliance with program requirements. Upon request, a vendor shall produce copies of any and all documents necessary to this audit within 30 days. The State WIC Office may implement any other monitoring procedure to verify vendor compliance with program requirements as is deemed appropriate under the circumstances. The vendor shall comply and cooperate with all such monitoring procedures. [8-30-89, 10-31-96; 7.31.2.19 NMAC – Rn, 7 NMAC 31.2.19, 5-31-2000]

7.31.2.20 VENDOR SANCTIONS:

A. GENERALLY: The State WIC Office may impose sanctions upon a vendor for non-compliance with the program. Sanctions may include immediate disqualification from the program, or such other lesser penalties, in addition to or in lieu of disqualification, as the State WIC Office deems appropriate to the nature and severity of the violation(s). In addition to sanctions which may be imposed by the state WIC office, a vendor who commits fraud or abuse of the system, or who deals unlawfully in WIC food instruments, or who aids and abets another in so doing, is liable to prosecution and fines under state and federal law.

B. PENALTIES & OFFENSES:

(1) Disqualification. Grounds for outright disqualification of a vendor from the program include, but are not limited to, the following:

(a) Redeeming WIC food instruments while the vendor is suspended or disqualified.

(b) Charging WIC customers tax on WIC purchases.

(c) Failing to enter the actual purchase price of authorized foods and/or infant formulas purchased on WIC food instruments at the time of redemption.

(d) Redeeming WIC food instruments for fixed amounts that do not reflect actual authorized food package costs.

(e) Redeeming WIC food instruments for dollar amounts greater than actual authorized food package costs.

(f) Causing or permitting unfair or discriminatory treatment of WIC participants, or otherwise violating the civil rights of WIC participants.

(g) Price fixing of WIC authorized foods and/or infant formulas.

(h) Altering WIC food instruments for fraudulent or unlawful purposes.

- (i) Providing valuable consideration other than WIC authorized foods or formulas, in exchange for WIC food instruments, or negotiating WIC food instruments for cash, credit or non-food items.
- (j) Submitting falsified WIC food price information to the State WIC Office.
- (k) Aiding or abetting WIC participants in fraud or abuse of the program, or in the unlawful dealing in WIC food instruments.
- (l) Negotiating stolen or counterfeit food instruments.
- (m) Providing materially false or misleading information in an application.
- (n) Failing to submit timely applications or re-applications.
- (o) Otherwise committing fraud or abuse of the WIC program.
- (p) Criminal conviction of fraud or abuse related to the WIC program or the Food Stamp Program.
- (q) If the Food Stamp Program disqualifies a vendor, WIC shall disqualify the vendor for the same length of time as the Food Stamp Program disqualification. (Disqualification from the WIC program may also result in a vendor being disqualified from the Food Stamp Program).
- (r) If the Food Stamp Program assesses a civil monetary penalty (CMP) to a vendor in lieu of disqualification, WIC may disqualify for the length of time the vendor would otherwise have been disqualified in the Food Stamp Program.
- (s) Criminal conviction for trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments.
- (t) One incidence of buying or selling food instruments for cash (trafficking); or one incidence of selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments.
- (u) One incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for food instruments.
- (v) A pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the stores documented inventory of that supplemental food item for a specific period of time.
- (w) A pattern of charging participants more for supplemental food than non-WIC customers or charging participants more than the current shelf or contract price.
- (x) A pattern of receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or unauthorized person.
- (y) A pattern of charging for supplemental food not received by the participant.
- (z) A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives or controlled substances in exchange for food instruments.
- (aa) A pattern of providing unauthorized food items in exchange for food instruments, including charging for supplemental foods provided in excess of those listed on the food instrument.
- (2) Denial of redemption of WIC food instruments. Grounds for denial of redemptions of a vendor include, but are not limited to, the following:
 - (a) Repeated failure to use the WIC vendor stamp on WIC food instruments before bank deposit.
 - (b) Accepting WIC food instruments with non-matching participant signatures.
 - (c) Failing to obtain participant counter signatures on WIC food instruments at the time of redemption.
 - (d) Accepting pre-signed WIC food instruments.
 - (e) Accepting altered WIC food instruments.
 - (f) Accepting WIC food instruments before valid issue date.
 - (g) Accepting WIC food instruments after the 30 day time limit for redemption.
 - (h) Depositing WIC food instruments after the 90 day time limit for deposit.
 - (i) Forwarding food instruments to the State WIC Office for replacement after their expiration date.
 - (j) Failing to promptly notify the State WIC Office of a missing vendor stamp if such loss results in the submission of unauthorized food instruments for redemption.
 - (k) Food instruments forwarded by anyone other than an authorized vendor for an authorized vendor location to the State WIC Office for redemption.
- (3) Vendor Suspension. Grounds for vendor suspension from the program include, but are not limited to, the following:
 - (a) Providing outdated authorized foods and/or infant formulas to WIC customers.
 - (b) Failing to maintain the minimum stock and variety requirements of authorized foods and/or infant formulas.

- (c) Failing to submit or failing to timely submit vendor and food or infant formula price information as required or requested by the State WIC Office.
- (d) Failing to furnish WIC participants with itemized receipts at the time of purchase.
- (e) Requiring WIC participants to countersign WIC food instruments prior to entering the dollar purchase amount on the food instruments.
- (f) Providing a “raincheck,” or otherwise allowing a WIC participant to make more than one transaction with a single food instrument.
- (g) Redeeming WIC food instruments for greater quantities of authorized foods and/or infant formulas than those specified on the food instruments.
- (h) Accepting or soliciting payment from WIC participants for dollar amounts that exceed actual authorized costs of foods and/or infant formulas.
- (i) Accepting or soliciting payment from WIC participants for dollar amounts that exceed the maximum redemption value specified on the food instruments.
- (j) Soliciting payment from WIC participants for food instruments which the State WIC Office has refused to redeem or has otherwise dishonored.
- (k) Failing to enter the redemption date on WIC food instruments.
- (l) Entering an incorrect redemption date on WIC food instruments.
- (m) Duplicating a vendor stamp.
- (n) Providing false or misleading information in an application.
- (o) Failing to display prices on shelves, coolers or foods and formulas.
- (p) Engaging in participant discrimination.
- (q) Failing to report participant fraud or abuse of the WIC program.
- (r) Failing to maintain competitive prices.
- (s) Failing to maintain required information in files or on display.
- (t) Failing to appear for mandatory training without good cause.
- (u) Violation of health, safety or sanitation codes.
- (v) Failing to produce requested records in a timely manner.
- (4) Miscellaneous provisions.
 - (a) Program fraud or abuse/unlawful dealing in WIC food instruments. The State WIC Office may share findings of its investigation and monitoring activities with law enforcement, Food Stamp program authorities, or other WIC authorities, if it suspects fraud or abuse of the WIC Program, unlawful dealing in WIC food instruments, or if Food Stamp Program violations have occurred; and will cooperate fully with such authorities in their investigation.
 - (b) Combination of offenses. Nothing in these regulations shall preclude the State WIC Office from charging a vendor with multiple offenses, or from simultaneously imposing sanctions for offenses in different categories, subject to the limitations imposed by sub-section A of 7.31.2.21 NMAC and sub-section B of 7.31.2.22 NMAC below.
 - (c) Repeated violations. The State WIC Office may impose sanctions up to and including vendor disqualification for violations which would not of themselves constitute grounds for disqualification, but which recur after opportunity to cure and warnings have been provided to the vendor. The State WIC Office may also impose lesser sanctions, such as suspension from the program, denial or redemption of food instruments, or denial of replacement of food instruments for repeated instances of vendor non-compliance with program requirements.
 - (d) Civil penalties. The State WIC Office may demand reimbursement from a vendor for offenses which result in overcharges to the program, and may otherwise avail itself of all civil remedies available under New Mexico and federal law.

[8-30-89, 10-31-96, 10-31-96; 7.31.2.20 NMAC – Rn, 7 NMAC 31.2.20, A, 5-31-2000]

7.31.2.21 DURATION OF SANCTIONS:

A. DISQUALIFICATION: A vendor may be disqualified from the program for state agency violations for a period of time not to exceed one year per investigation, or for such shorter periods of time as are deemed reasonable and appropriate by the State WIC Office to the nature and severity of the offense. The exception to this are the time periods for the federally mandated sanctions which shall control for federal violations:

- (1) A vendor shall be permanently disqualified for violation of sub-paragraph (s) of paragraph (1) of sub-section B of 7.31.2.20 NMAC.

(2) A vendor shall be disqualified for 6 years for violation of sub-paragraph (t) of paragraph (1) of sub-section B of 7.31.2.20 NMAC.

(3) A vendor shall be disqualified for 3 years for any of the violations listed in sub-paragraphs (u) through (z) of paragraph (1) of sub-section B of 7.31.2.20 NMAC.

(4) A vendor shall be disqualified for one year for violation of sub-paragraph (aa) of paragraph (1) of sub-section B of 7.31.2.20 NMAC.

(5) For any of the violations listed in sub-paragraphs (t) through (aa) of paragraph (1) of sub-section B of 7.31.2.20 NMAC, a vendor shall receive double the sanction for a second occurrence of any violation listed, except that a Civil Monetary Penalty (CMP) may only be doubled up to the amounts allowed in sub-section B of 7.31.2.22 NMAC.

(6) For any of the violations listed in sub-paragraph (t) through (aa) of paragraph (1) of sub-section B of 7.31.2.20 NMAC, a vendor shall receive double the sanction for a third or subsequent occurrence of any violation, except that a Civil Monetary Penalty (CMP) shall not be imposed in lieu of disqualification.

(7) For multiple violations investigated as part of a single investigation, the State WIC Office shall disqualify the vendor for the period corresponding to the most serious federal violation. All violations shall be included in the notice of federally mandated administrative action. If a sanction is not upheld on appeal, then the State WIC Office may impose a state agency established sanction.

B. SUSPENSION OF VENDORS: A vendor may be suspended from the program for a period of time not to exceed one year, or for such shorter periods of time as are deemed reasonable and appropriate by the State WIC Office to the nature and severity of the offense.

C. VOLUNTARY WITHDRAWAL: The state shall not accept voluntary withdrawal or non-renewal of the vendor agreement as an alternative to disqualification for violations listed in sub-paragraph (s) through (aa) of paragraph (1) of sub-section B of 7.31.2.20 NMAC.

D. DENIAL OF REPLACEMENT OF FOOD INSTRUMENTS: The State WIC Office may deny replacement of a vendor's submitted food instruments for a period of time not to exceed six months, or for such shorter periods of time as are deemed reasonable and appropriate by the State WIC Office to the nature and severity of the offense.

E. DENIAL OF REDEMPTIONS: Food instruments denied for redemption shall be permanently voided and shall not be paid or replaced at any time.

[8-30-89, 10-31-96, 10-31-96; 7.31.2.21 NMAC – Rn, 7 NMAC 31.2.21, A, 5-31-2000]

7.31.2.22 DISPUTE RESOLUTION/WAIVER OF SANCTIONS:

A. ALTERNATIVE DISPUTE RESOLUTION: If it finds that a vendor has committed an offense warranting sanctions, the State WIC Office may elect to issue a warning letter to the vendor, specifying a time frame and requirements for cure of the deficiency(ies). Timely compliance shall operate to purge the vendor of the offense. Exercise of this option by the State WIC Office shall not constitute a waiver of the Office's right to sanction the vendor for the same or similar offenses in the future, nor of the right to sanction other vendors for any offense(s) at any time.

B. CIVIL MONETARY PENALTY IN LIEU OF DISQUALIFICATION: The State WIC Office may elect to offer a vendor the option of payment of monetary penalties not to exceed \$10,000 per violation up to a maximum of \$40,000 for violations investigated as part of a single investigation, or such lesser amounts as may be deemed reasonable and appropriate considering the nature and severity of the offense(s), in lieu of outright disqualification from the program.

(1) For any of the violations listed in sub-paragraphs (q) and (s) through (aa) of paragraph (1) of sub-section B of 7.31.2.20 NMAC, the State shall impose a Civil Monetary Penalty (CMP) in lieu of WIC disqualification if such disqualification of the vendor would result in inadequate participant access; or, with respect to violations listed in sub-paragraph (s) of paragraph (1) of sub-section B of 7.31.2.20 NMAC, if the vendor had, at the time of the violation, an effective program and policy in effect to prevent trafficking, and if the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

(2) The CMP shall be calculated by using the following formula:

(a) Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of administrative action is dated;

(b) Multiply the average monthly redemptions figure by ten percent (.10);

(c) Multiply the product from sub-paragraph (b) of paragraph (2) of sub-section B of 7.31.2.22 NMAC by the number of months for which the store would have been disqualified. This is the amount of the CMP, provided that the CMP shall not exceed \$10,000 for each violation. For a violation that warrants disqualification, the amount of the CMP shall be \$10,000.

(3) Exercise of this option by the State WIC Office shall not constitute a waiver of the Office's right to disqualify the vendor for the same or similar offenses in the future, nor of the right to disqualify other vendors for any offense(s) at any time.

C. WAIVER OF SANCTIONS: For good cause or exigent circumstances, the State WIC Office may waive imposition of sanctions for offenses. Such waiver shall not constitute a waiver of the Office's right to impose sanctions for the same violation on the same vendor at a future time, nor to waive the Office's right to impose sanctions on other vendors for the same offense at any time.

[8-3-89, 10-31-96; 7.31.2.22 NMAC – Rn, 7 NMAC 31.2.22, A, 5-31-2000]

7.31.2.23 HEARING PROCESS AND PROCEDURES:

A. RIGHT TO HEARING – SCOPE: Vendors may appeal decisions of the State WIC Office which adversely affect their participation in the program, including but not limited to the following actions:

- (1) Denial of a vendor's application to participate in the program;
- (2) Suspension of a vendor's authorization to participate in the program;
- (3) Termination of a vendor's authorization to participate in the program;
- (4) Denial of redemption of food instruments submitted to the State WIC Office.
- (5) The following determinations are not subject to review: Disqualification of a vendor as result of disqualification from the Food Stamp Program, expiration of a contract or agreement with a vendor, and the State Agency's determination regarding participant access.

B. NOTICE OF PROPOSED SANCTIONS: Vendors shall be informed in writing of any action adversely affecting their participation in the WIC program. Notice shall be to all parties whose names and addresses are on file by certified mail or personal service. The notice shall:

- (1) Describe the offense(s) and the proposed sanction(s);
- (2) Inform the vendor of the effective date of proposed sanction(s) and their duration; and
- (3) Inform the vendor of the right to request an evidentiary hearing.

C. REQUEST FOR HEARING: Hearing requests must be made in writing and mailed to the New Mexico Department of Health, Public Health Division, Family Health Bureau - WIC, 525 Camino de los Marquez, Suite 6, Santa Fe, New Mexico 87501, and received by the State WIC Office within 30 days after the vendor's receipt of the notice of proposed sanctions. Untimely requests may be grounds for dismissal. A request for hearing shall not operate to stay the imposition of proposed sanctions against a vendor. The State WIC Office may, within its discretion, implement proposed sanctions at any time after fifteen (15) days from the date of service of a notice of proposed sanctions upon a vendor.

D. PRE-HEARING PROCEDURE

(1) **Impartial Hearing Officer:** Upon receipt of a timely request for hearing, the Secretary of the Department, or his designee, shall appoint an impartial Hearing Officer to preside over the case. The Hearing Officer shall not have been involved in the action in question, or in any way be affiliated with the State WIC Office. The Hearing Officer should be familiar with the WIC program and procedures, and with evidentiary rules and adjudicatory proceedings. The Hearing Officer need not be an attorney.

(2) **Scheduling of Hearings:** The Hearing Officer shall schedule a hearing on the matter to be held in Santa Fe, and shall provide all parties with written, advance notice of the date, time and place of the hearing, a minimum of seven (7) calendar days prior to the hearing, unless otherwise agreed to. The notice shall identify the proposed Hearing Officer. A hearing date shall be scheduled no later than thirty (30) days after receipt of a timely request for hearing by the State WIC Office.

(3) **Rescheduling:** Either party may, without cause, request that the initial hearing be rescheduled. Subsequent requests to reschedule shall be granted only for good cause or exigent circumstances, upon motion by a party or upon the Hearing Officer's own motion. Upon timely motion, and upon a showing of undue hardship and burden, the Hearing Officer may order the hearing changed to another in-state location. Notice of rescheduling shall be furnished to both parties reasonably in advance of the previously scheduled date.

(4) **Discovery:**

(a) Initial discovery – Documents: Upon request, vendors shall have the right to review their case record in advance of the hearing, and shall be furnished copies of requested documents contained therein at cost.

(b) Initial discovery – Witnesses: Each party shall disclose to the other orally or in writing the names of prospective witnesses and the general subject matter of their anticipated testimony, not less than three (3) days before the hearing. Affidavits may be presented instead of live testimony, upon a showing that the witness is not available in the state, or that compelling the witness to appear at the hearing would present undue hardship. Such affidavits, to be admissible at the hearing, must be submitted to the opposing party and the Hearing Officer no less than seven (7) days prior to the hearing.

(c) Additional discovery in complex cases: Upon written request of a party setting forth reasons why additional discovery may be necessary or desirable, and at the Hearing Officer's discretion, further discovery in the form of document production or informal witness interviews may be permitted. Formal depositions are not allowed. Factors to be weighed in the Hearing Officer's decision concerning whether additional discovery is merited include whether the complexity of fact or law surrounding a particular case requires further discovery to reasonably assure a full and fair hearing, the timeliness of the request, and whether such requests granted would unreasonably delay the hearing, or the rendering of a final decision. If additional discovery is allowed, the Hearing Officer may reschedule the hearing in accordance with paragraph (3) of sub-section D of 7.31.2.23 NMAC above. Rescheduling for discovery purposes tolls the time period for the Hearing Officer's rendering of a final decision in the matter, as set forth in sub-section F of 7.31.2.23 NMAC below.

(5) Motions and pre-hearing conferences: Either party may file motions at least ten (10) days in advance of the hearing which are intended to narrow or dispose of anticipated issues. The Hearing Officer may rule on such motions as a preliminary matter at the hearing itself, or may set a pre-hearing conference, if it would serve to narrow or dispose of issues in advance of the hearing. Copies of all motions shall be mailed to the opposing party at or before the time of mailing to the Hearing Officer.

E. HEARING PROCEDURE:

(1) Right to counsel: Vendors may represent themselves at the hearing, or may be represented by legal counsel or other designated representative, provided such representative has made a written entry of appearance prior to the hearing.

(2) Hearing Officer powers and duties: The Hearing Officer shall have the power to issue subpoenas and compel the appearance of witnesses, shall administer oaths to witnesses, take testimony, rule on the admissibility of evidence, schedule pre-hearing conferences if helpful to narrow issues, rule on motions, schedule hearings, and otherwise assure full development of the issues. The Hearing Officer may consolidate hearings of different parties if they involve common questions of law and fact. Before rendering a final decision, the Hearing Officer shall not communicate with any party concerning the subject matter of the hearing outside of the presence of the opposing party. The Hearing Officer is responsible for recording the proceedings. A Hearing Officer may not be disqualified except by agreement of both parties, or upon the Hearing Officer's own motion.

(3) Conduct of the Hearing: Hearings shall be conducted in an orderly manner such that both parties shall have the opportunity to present witnesses, to establish all facts pertinent to the case or defense, to introduce exhibits and documentary evidence through qualified witnesses, to advance arguments without undue interference, to confront, impeach, and cross-examine witnesses, and to refute adverse testimony or evidence.

(4) Procedure and evidence: The technical rules of evidence and civil procedure shall not apply in these hearings. Where such rules would be helpful to an understanding or resolution of a point or issue, non-binding reference to the Federal Rules of Evidence and the Federal Rules of Civil Procedure may be permitted. The Hearing Officer may admit all relevant evidence including hearsay, if it is of such a nature that ordinary, reasonable and prudent persons would rely on the information in the conduct of serious business affairs. The Hearing Officer may consider the hearsay nature of testimony in assessing the weight it should be accorded.

(5) Mechanics and burden of proof: The State WIC Office shall have the burden of proving by a preponderance of the evidence one or more of the allegations cited in the notice of proposed sanctions. The State WIC Office may make an opening statement and shall present its evidence first. Either party may invoke the rule. Both parties may make objections or raise defenses generally recognized under law in civil cases. The State WIC Office is entitled to a representative's presence in the hearing room throughout the proceeding, even if that representative will testify in the hearing. The vendor may make an opening statement either before or after the State WIC Office's evidence is presented, and shall present its evidence after the State WIC Office rests its case. Oral evidence shall be taken only upon oath or affirmation. In the discretion of the Hearing Officer, closing arguments

may be made orally after the vendor's presentation of the case, or in writing within a time specified by the Hearing Officer. Hearings shall be recorded by a sound recording device.

(6) Failure to appear: Failure of a party to appear at the hearing without good cause shall constitute a default, and the Hearing Officer shall so inform both parties.

(7) Open hearings: Hearings are open to the public unless all parties agree otherwise.

F. HEARING OFFICER'S DECISION: The Hearing Officer shall, as soon as practicable after the conclusion of the hearing and submission of closing arguments, render a written decision in the matter, state the basis for the decision, and specify the effective date of the decision. The Hearing Officer's decision shall be based exclusively on evidence and testimony introduced at the hearing. The decision need not contain findings of fact or conclusions of law. The Hearing Officer's decision shall be final. The Hearing Officer shall, within 60 days of the date of the State WIC Office's receipt of a request for hearing from a vendor, issue written notification of the decision in the matter. If the hearing in the matter is continued for any reason from its originally scheduled setting, this time period is tolled for the period of the continuance.

G. JUDICIAL REVIEW: Any party may appeal the Hearing Officer's final decision pursuant to the provisions of Section 39-3-1.1 NMSA 1978. Filing for judicial review does not stay or dissolve enforcement of the final decision. The reviewing court shall set aside the final order only if it is found to be:

- (1) Arbitrary, capricious, or an abuse of discretion;
- (2) Not supported by substantial evidence in the record;
- (3) In excess of the authority of the State WIC Office; or
- (4) Otherwise not in accordance with law.

[8-30-89, 10-31-96; 7.31.2.23 NMAC – Rn, 7 NMAC 31.2.23, A, 5-31-2000]

7.31.2.24 OTHER REGULATIONS: These regulations are subject to the provisions of the New Mexico Department of Health's Regulations for Regulation Promulgation (H.E.D. 78-5-1 (1978) or its most current version, and laws governing inspection of public records (N. M. Stat. Ann. 1978, 14-2-1 et. seq. (Rep. Pamp. 1988). Copies of these regulations may be obtained by writing to the New Mexico Department of Health, Public Health Division, Family Health Bureau – WIC, 525 Camino de los Marquez, Suite 6, Santa Fe, NM 87501.

[8-30-89,10-31-96, 10-31-96; 7.31.2.24 NMAC – Rn, 7 NMAC 31.2.24, A, 5-31-2000]